Supreme Court, U.S.
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No. 04-

IN THE

Supreme Court of the United States

ROBERTO COTA MEZA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Tenth Circuit affirmed the conviction of Roberto Cota-Meza for possession with intent to distribute cocaine notwithstanding the use of a jury instruction which imputed knowledge of the drugs based on the sole possession of a vehicle. Such an instruction: (1) has been rejected by the Ninth Circuit through use of its supervisory authority; and (2) is a misstatement of the law according to the Fifth Circuit and Third Circuit. Two questions are presented to the Court:

1. Where evidence of knowledgeable possession of contraband is established by circumstantial evidence, must that circumstantial evidence be suspicious in nature or demonstrate guilty knowledge in order to be legally sufficient?

2. When an instruction focuses on one damning piece of evidence at the direction of the judge, does that violate the Sixth Amendment guarantee of trial by an impartial jury by impermissibly intruding upon the deliberative process of the jury or in the alternative, require the exercise of the Court's supervisory authority?

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Roberto Cota Meza petitions for a writ of certiorari to the Tenth Circuit Court of Appeals, in *United States v. Cota Meza*, Case No. 03-3161.

OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at *United States v. Cota-Meza*, 367 F.3d 1218 (10th Cir. 2004).

STATEMENT OF JURISDICTION

The Tenth Circuit entered its Opinion affirming Mr. Cota Meza's conviction on May 10, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any State deprive any persons of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

1. Petitioner Roberto Cota Meza was charged and convicted following a jury trial of one count of possession of five or more kilograms of cocaine in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Petitioner was traveling

through Kansas on his way to Maine when he was pulled over for a traffic violation. He was the sole occupant of the vehicle. The vehicle belonged to Mario Quintero and Cota Meza was taking the van to Maine at Quintero's request as Quintero had promised him a job as a cook.

Cota Meza consented to a search of the minivan he was driving. The search revealed 18.8 kilograms of cocaine stowed in an elaborate hidden compartment under the front seat of the vehicle. The compartment was operated by a passenger window control. Cota Meza denied knowledge of the cocaine. (App. at 1a-2a).

2. Over Cota-Meza's objection, the Court gave the following jury instruction:

> If you find that the government has proved beyond a reasonable doubt that defendant had sole possession of the van in which the cocaine was found, you may, but are not required to, infer that defendant had constructive possession of the cocaine.
>
> This inference does not relieve the government of its obligation to prove all of the elements of the offense beyond a reasonable doubt.

An instruction defining constructive possession was also given. (App. at 4a).

3. Cota Meza appealed his conviction to the Tenth Circuit Court of Appeals challenging the above described instruction, another instruction not at issue here as well as sufficiency of the evidence. The Tenth Circuit affirmed his conviction on May 10, 2004. This timely Petition for Writ of Certiorari follows based on the instruction cited in paragraph 2.

REASONS FOR GRANTING THE PETITION

The basis for the jury instruction given in this case and currently at issue derives from a sufficiency of the evidence case. As noted in more detail below, Circuit courts which have considered this instruction have taken conflicting approaches to its propriety. This conflict stems from a dispute whether evidence of knowledge of contraband may be established by possession of or control over a vehicle alone or whether other circumstantial evidence which is suspicious in nature or demonstrates guilty knowledge is required for proof of knowledge to be legally sufficient for a conviction. The propriety of this instruction is further complicated by varyir[illegible]pproaches Courts have taken in giving it. The Ninth Circuit, through use of its supervisory authority has held that such an instruction impermissibly intrudes on the deliberative process of the jury and has deemed it reversible error to give such an instruction. Conversely, the Tenth Circuit, found the instruction to be consistent with Tenth Circuit precedent which allows the jury to infer the driver of a vehicle has knowledge of contraband in the vehicle and permitted its use.

The issues raised are of great importance in part due to the sheer number of cases this type of instruction impacts. Cases involving contraband, whether the contraband be drugs, guns or some other prohibited item, arguably comprise a large part of the criminal dockets. In many of those cases, knowledge of the contraband is the only issue. In addition to the number of accused individuals this will impact, at the core of this controversy is a dispute over legally sufficient proof to establish knowledge. This Court's intervention is necessary to resolve the controversy by adopting a per se rule that the proof necessary to establish knowledge requires,

at a minimum, evidence that is suspicious in nature or demonstrates guilty knowledge.

This case also presents an issue of great importance on another level. Typical analysis of jury instructions puts them into two categories, permissive and mandatory. This Court has previously held under that permissive instructions do not implicate the Fourteenth Amendment Due Process Clause. However, what this Court has not considered is whether permissive inference instructions violate the Sixth Amendment right to an impartial trial by jury. Implicit in that right is that the province of the jury will not be invaded by the Court through the use of coercive instructions nor will the province of the jury be invaded by focusing the jury on one fact when it is required to weigh all of the evidence. Petitioner's rationale for requesting this writ of certiorari and underlying authority is explained further in the paragraphs that follow.

I. Where evidence of knowledgeable possession of contraband is established by circumstantial evidence, must that circumstantial evidence be suspicious in nature or demonstrate guilty knowledge in order to be legally sufficient?

In a criminal trial, the government must prove every element of the offense, and a jury instruction violates due process if it fails to give effect to that requirement. *See Sandstrom v. Montana*, 442 U.S. 510, 520-21, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979). When jury instructions attempt to define various elements, it is axiomatic that they correctly state the law in order to give effect to that requirement. When the law is ambiguous or in dispute, a clear directive from this Court is necessary in order for the lower courts to comply with due process. Such a directive is being requested today.

This case has a widespread impact beyond its simple facts because it addresses a common element of many offenses: constructive possession. Generally speaking, possession of contraband, whether it be drugs or a firearm, may be either "actual or constructive." *United States v. Hager*, 969 F.2d 883, 888 (10th Cir. 1992) (applying constructive possession to drug conviction under 21 U.S.C. § 841(a)(1)); *see United States v. Wahl*, 290 F.3d 370, 375-76 (D.C. Cir. 2002) (holding possession of firearm under § 924(c)(1) may be constructive); *United States v. Mills*, 29 F.3d 545, 549 (10th Cir. 1994) (applying constructive possession to weapons charge under 18 U.S.C. § 922(g)). Constructive possession is knowledge of presence of contraband plus control over the particular object. *United States v. Roberts*, 953 F.2d 351, 353 (8th Cir. 1992).

In evaluating constructive possession, the Tenth Circuit has concluded that the evidence is sufficient with regard to constructive possession if the defendant is the driver of a vehicle in which contraband is found. *United States v. Levario*, 877 F.2d 1483, 1485-86 (10th Cir. 1989), *overruled on other grounds by Gozlon-Perez v. United States*, 498 U.S. 395 (1991). In other words, a jury can infer that an individual knew about the contraband simply by being the driver of the car. The Fifth and Third Circuits require a higher quantum of proof. In those circuits, possession or control over a vehicle, standing alone is not sufficient to prove guilty knowledge and hence, constructive possession. There must be other circumstantial evidence which is either suspicious in nature or demonstrates guilty knowledge. *United States v. Anchondo-Sandoval*, 910 F.2d 1234, 1236 (5th Cir. 1990); *United States v. Iafelice*, 978 F.2d 92, 96-97 (3d Cir. 1992).

Because the law is ambiguous with respect to the required proof necessary to establish constructive possession, this Court's intervention is necessary to resolve the dispute between the Circuits on this issue. Only once this Court has spoken will the lower courts be able to craft jury instructions that correctly state the law and then presumably comply with due process.

II. When an instruction focuses on one damning piece of evidence at the direction of the judge, does that violate the Sixth Amendment guarantee of trial by an impartial jury by impermissibly intruding upon the deliberative process of the jury or in the alternative, require the exercise of the Court's supervisory authority?

The petitioner asks this Court to apply its ruling in *Ulster County Court v. Allen*, *supra*, to the instruction at issue and to consider for the first time whether a permissive instruction that may not violate due process nonetheless violates the Sixth Amendment. To date, constitutional challenges to permissive jury instructions have centered on whether the instruction had the effect of relieving the government of its burden of proof on a critical element in violation of the Due Process Clause of the Fourteenth Amendment. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1072, 25 L. Ed. 2d 368 (1970); *Ulster County Court v. Allen*, 442 U.S. 140, 157-63, 99 S. Ct. 2213, 2224-27, 60 L. Ed. 2d 777 (1979); *Francis v. Franklin*, 471 U.S. 307, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985). To this end, the threshold inquiry has been to determine whether the presumption is permissive or mandatory. *Franklin*, 471 U.S. 313-14. "A permissive inference suggests to the jury a possible conclusion to be drawn if the State proves predicate facts, but does not require

the jury to draw that conclusion." *Id.* at 314. If the instruction is permissive, it violates the Due Process Clause only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury. *Ulster County Court*, 442 U.S. at 157-63.

As this Court held in *Ulster County Court*, due process is violated only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury. However, when a instruction is worded such that it focuses on one damning fact rather than the totality of the evidence, it places impermissible emphasis on that particular evidence. Thus, the conclusion is one that is drawn not in light of ALL the proven facts as mandated by *Ulster County Court* but just by one particular fact. Furthermore, this instruction is constitutionally infirm not only under the Due Process Clause but also under the Sixth Amendment. This Court has never considered whether the undue emphasis on one particular fact or facts violates the Sixth Amendment right to a trial by a fair and impartial jury. However, the dangers of such an instruction has caused one Court to exercise its supervisory authority in denouncing such an instruction. *United States v. Rubio-Villareal*, 967 F.2d 294, 299 (9th Cir. 1992). The danger of such an instruction is well recognized. As a leading commentator observed:

> The key problem with permissive inferences is that they isolate and abstract a single circumstance from the complex of circumstances presented in any given case, and, on proof of that isolated fact, authorize an inference of some other fact beyond a reasonable doubt. . . . Permissive inferences thus permit juries to avoid assessing the myriad of facts which make specific cases unique.

Charles R. Nesson, Reasonable Doubt and Permissive Inferences: The Value of Complexity, 92 Harv. L. Rev. 1187, 1992 (1979). The Ninth Circuit, sitting en banc, summarized the danger: that when a judge tells a jury, through instructions, that it may infer knowledge from certain facts, he risks conveying the message that he himself has weighed the evidence and finds it sufficient to convict. *Rubio-Villareal*, 967 F.2d at 299. In *Rubio-Villareal*, the Court considered the following instruction:

> You are instructed that if you find that the defendant was the driver of a vehicle containing contraband in this case; and if you find that the cocaine was found inside that vehicle and concealed in its body, you may infer from these two facts, that the defendant knew that the cocaine was in the automobile; however you are never required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in this case warrants any inference which the law permits the jury to draw. *Id.* at 295.

Even if a jury is told that it is free to ignore that conclusion, the Court concluded that disclosure of the Court's opinion by suggesting the inference to be drawn creates the risk that the jury would abdicate its responsibility. *Id.* at 300. Additionally, by focusing the jury on a specific fact, the instruction permits the jury to convict without considering all the evidence presented at trial. *Id.* at 300.

Notwithstanding its recognition of these dangers, the Court below in this case declined to exercise supervisory authority or consider whether the instruction was improper

on other grounds beyond due process. (App. at 8a). As in *Rubio-Villareal*, the instruction in this case is permissive. It derives from a sufficiency of the evidence case in the Tenth Circuit which held that a jury may infer that the driver of a vehicle has knowledge of contraband in the vehicle. *United States v. Levario*, 877 F.2d 1483, 1485-86 (10th Cir. 1989), *overruled on other grounds by Gozlon-Perez v. United States*, 498 U.S. 395 (1991).

The inconsistent exercise of supervisory authority by the Ninth and Tenth Circuits creates a dilemma that only this Court can resolve. The federal appellate courts have "supervisory power". *Bank of Nova Scotia v. United States*, 487 U.S. 250, 254, 108 S. Ct. 2369, 2373, 101 L. Ed. 2d 228 (1988). That power can be exercised under the following circumstances: "to implement a remedy for violation of recognized rights, to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before the jury, and finally, as a remedy designed to deter illegal conduct." *United States v. Hasting*, 461 U.S. 499, 505, 103 S. Ct. 1974, 1978, 76 L. Ed. 2d 96 (1983).

As it pertains to the jury instruction at issue in this case, and where the Tenth Circuit declined to consider any other rationale for not giving the instruction, exercise of supervisory authority by the Tenth Circuit was essential to preserve the integrity of the jury deliberation process. However, with no explanation, the Court failed to do so. (App. at 5a). In contrast, under the same circumstances the Ninth Circuit chose to act under the auspices of its supervisory authority. The result of this is to allow defendants in similar factual situations to have their cases decided in markedly different fashion based on the instruction. Since a critical function of the Supreme Court is to exercise supervisory authority, it should do so now to resolve the conflict.

Moreover, the conflict is heightened by the use of supervisory power by the Ninth Circuit in a situation where the Constitution speaks to the issue. *Hasting*, 461 U.S. at 505 (supervisory authority should be used to formulate rules not specifically required by the Constitution or Congress). The danger pointed out by the Ninth Circuit, to wit: that the inference creates the risk that the jury would abdicate its responsibility and the danger recognized by both Courts that such an instruction would encourage a jury to convict the defendant without considering all the evidence at trial impairs a defendant's the Sixth Amendment right to trial by a fair and impartial jury. *Rubio-Villareal* 967 F.2d at 300. (App. at 7a, 8a).

Thus, by intervening, this Court can resolve this matter on the obvious Constitutional ground, i.e. interference with the deliberative process of the jury violates the Sixth Amendment. Should the Court decline to do so, it should resolve the conflict in the disparate exercise of supervisory authority by the lower courts.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT FILED MAY 10, 2004

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

No. 03-3161

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERTO COTA-MEZA,

Defendant - Appellant.

Before **MURPHY**, **ANDERSON**, and **McCONNELL**, Circuit Judges.

MURPHY, Circuit Judge.

I. INTRODUCTION

Defendant-appellant Roberto Cota-Meza was pulled over for a traffic violation. Upon return of his documents by the officer and being told that he was free to go, Cota-Meza consented to a search of the vehicle. The search revealed 18.8 kilograms of cocaine stowed in a hidden compartment under the front seats of the vehicle. Cota-Meza denied any knowledge of the cocaine.

Cota-Meza was charged with one count of possession with the intent to distribute five or more kilograms of cocaine in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. No fingerprints were found on the cocaine packages, and no fingerprint analysis was conducted on the minivan. As a consequence, fingerprint evidence was not available at trial.

The government did not videotape Cota-Meza's interrogations. Cota-Meza's interview with a DEA agent was audio-taped, but only the transcripts of that interview, not the audiotape itself, were produced at trial.

Cota-Meza was convicted after a jury trial and sentenced to 151 months' imprisonment and 5 years' supervised release. Cota-Meza argues on appeal that the district court abused its discretion when it gave two jury instructions. He also argues that the evidence at trial was insufficient to support his conviction. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, this court **affirms** Cota-Meza's conviction.

II. BACKGROUND

Cota-Meza was traveling through Kansas on his way to Maine. He was driving a minivan which belonged to one Mario Quintero. Cota-Meza claims that he agreed to take the minivan to Maine at the request of Quintero, who promised him a job as a cook in Maine or money in return.

Officer Chris Tedder spotted Cota-Meza committing a traffic infraction and activated his lights and siren to stop Cota-Meza. Cota-Meza drove for a mile and a half before he stopped. As Officer Tedder approached the vehicle, he noticed

Cota-Meza was "real fidgety" and rocking in his seat. Officer Tedder obtained Cota-Meza's driving documentation and noticed that Cota-Meza's hand was shaking as he provided his license. Officer Tedder asked Cota-Meza to step out of the vehicle and gave him a warning ticket.

Officer Tedder returned Cota-Meza's driver's license and registration and informed him that he was free to leave. Cota-Meza began to walk hurriedly back to the minivan. Officer Tedder then asked Cota-Meza if there was anything illegal in the van. Cota-Meza said, "No." When asked specifically about illegal drugs in the van, Cota-Meza paused, looked at the ground, and again responded "No" in a low tone.

Cota-Meza subsequently consented to a search of the vehicle. Officer Tedder found a hidden compartment concealing packages underneath the front driver's and passenger's seats which contained a number of bundles totaling 18.8 kilograms of highly pure cocaine. When confronted about the hidden compartment, Cota-Meza hung his head and claimed to have no knowledge of it. At a later interview with a DEA agent, Cota-Meza again denied knowledge of the cocaine.

III. DISCUSSION

This court reviews a district court's decision to give a particular jury instruction for an abuse of discretion and considers the instructions as a whole *de novo* to determine whether they accurately informed the jury of the governing law. *United States v. Soussi*, 316 F.3d 1095, 1106 (10th Cir. 2002). On review, this court merely determines whether the

jury was misled by the instructions and whether it had an understanding of the issues and its duty to resolve those issues. *United States v. Jaynes*, 75 F.3d 1493, 1504 (10th Cir. 1996). If there is an instructional error, this court then determines whether or not it is harmless. *Soussi*, 316 F.3d at 1105. An instructional error is harmless unless the error had a substantial influence on the outcome of the trial or if the court is left in grave doubt as to its influence. *Id.* The conviction will stand if the error is harmless. *Id.*

1. *Jury Instruction on Permissive Inference*

The main issue in this case was whether Cota-Meza knew of the cocaine's presence in the vehicle. The challenged instruction stated:

> If you find that the government has proved beyond a reasonable doubt that defendant had sole possession of the van in which the cocaine was found, you may, but are not required to, infer that defendant had constructive possession of the cocaine.
>
> This inference does not relieve the government of its obligation to prove all of the elements of the offense beyond a reasonable doubt.

Cota-Meza argues that this jury instruction violated his due process rights because it emphasized his sole possession of the vehicle to the exclusion of all the other evidence presented in this case. Cota-Meza argues that this instruction

favored the prosecution by discouraging the jury from considering all the evidence. Cota-Meza further claims that this instruction undermined the general presumption of an accused's innocence and requires a reversal of his conviction. He urges this court to follow a Ninth Circuit case in which the court exercised its supervisory power over the district court to declare a similar permissive inference instruction improper. *See United States v. Rubio-Villareal*, 967 F.2d 294, 298, 301 (9th Cir. 1992). Assuming, without deciding, that this Court has the authority to reverse Cota-Meza's conviction on the basis of supervisory power, we choose not to do so.

This court must first decide whether the presumption in the jury instruction is permissive or mandatory. *See County Court of Ulster County v. Allen*, 442 U.S. 140, 159 n.16, 160-61 (1979). The instruction in question is permissive because it tells the jury that it *may*, but is not required to, draw the inference of Cota-Meza's knowledge of the cocaine, and that it is not required to convict the defendant based on this inference alone. *See Ulster County*, 442 U.S. at 159 n.16 (instruction is permissive if it makes clear that the predicate facts do not have conclusive force as to the truth of the permitted conclusion); *United States v. Tecumseh*, 630 F.2d 749, 753 (10th Cir. 1980) (instruction telling jury that it may infer a fact is a permissive instruction). It further states that the jury is not required to infer constructive possession, thus leaving the jury discretion to determine the ultimate fact of guilt beyond a reasonable doubt independent of the inference. *See Tecumseh*, 630 F.2d at 754.

The district court did not abuse its discretion in choosing to give the above permissive inference jury instruction.

A permissive inference instruction is valid if there is a rational connection between the fact that the prosecution proved and the ultimate fact presumed, and the latter is more likely than not to flow from the former. *Ulster County*, 442 U.S. at 165. We judge that likelihood not in the abstract but as applied to the specific case in which the instruction was given. *See id.* at 162-63. In this case, there was evidence indicating the owner of the drugs would not allow the vehicle to be used by someone who had no knowledge of the drugs: the drugs had an estimated street value of $2.6 million; the secret compartment was operated by the passenger window control, making it readily discoverable by an unsuspecting passenger. Furthermore, there was evidence that Cota-Meza received payment for driving the vehicle. On these facts, we have no trouble concluding that the inference of Cota-Meza's constructive possession of the hidden drugs is more likely than not to flow from the undisputed fact of his sole possession of the minivan. The instruction is consistent with Tenth Circuit precedent which allows the jury to infer that the driver of a vehicle has knowledge of contraband in the vehicle. *See United States v. Levario*, 877 F.2d 1483, 1485-86 (10th Cir. 1989), *overruled on other grounds by Gozlon-Peretz v. United States*, 498 U.S. 395 (1991).[1]

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1. *Levario* approved the inference in the context of a sufficiency of the evidence challenge, not a permissive inference instruction. In relying on it, we do not mean to suggest that standards governing the two contexts are the same. We leave for another the day the question of whether an inference could be rational enough to avoid reversal under this deferential standard but dubious enough that a judge could not properly recommend it, even permissively, to the jury.

The challenged jury instruction did not impermissibly shift the burden of proof to Cota-Meza. *See Ulster County*, 442 U.S. at 156-57 (permissive instructions cannot shift the burden of proof to the defendant or lessen the burden upon the government); *Tecumseh*, 630 F.2d at 754 (same). The instruction in the instant case states that the government had to prove all the elements of the crime beyond a reasonable doubt, including the permissive inference's underlying fact that the defendant was in sole possession of the minivan.

A *de novo* review of the jury instructions as a whole shows that they accurately informed the jury of the governing law. In this context, the challenged instruction neither undermines the jury's ability to deliberate nor prevents the jury from considering all the evidence. *See Rubio-Villareal*, 967 F.2d at 299 (jury instructions must not infringe on the jury's sole responsibility to evaluate *all* the evidence presented at trial). The jury was instructed to consider the jury instructions as a whole. The other instructions clearly stated that the government had to prove each element of the offense beyond a reasonable doubt. The jury was instructed to look at all the evidence presented in the case. It was also instructed that the defendant was presumed to be innocent, and that in giving the instructions, the court did not mean to express any view about how the jury should decide the case.

This court cautions that the permissive instruction in question is not a model of clarity, and this court would not have chosen to so instruct a jury. Permissive inference instructions such as the one at bar have been roundly criticized for encouraging the jury to convict on the basis of one damning fact without considering all of the other

evidence. *See Rubio-Villareal*, 967 F.2d at 298. A better instruction would have stressed that the jury was permitted to draw the inference only if in light of all of the other evidence, the defendant's sole possession of the vehicle convinced the jury beyond a reasonable doubt that he knew of the drugs. As noted above, however, the other instructions largely dispelled any possibility of misunderstanding. Therefore, despite this instruction's infirmities, the district court's decision to use it does not constitute an abuse of discretion in this case.

2. *Jury Instruction on Law Enforcement Methods*

Cota-Meza argues that Jury Instruction 24 sent a message to the jury that "it was okay that the government didn't fingerprint, that it didn't get video-recorders fixed or that [the] lost audio-tapes of Mr. Cota-Meza['s] interview were irrelevant." In turn, Cota-Meza argues, Instruction 24 prevented the jury from considering whether the government's failure to produce such evidence led to a reasonable doubt of his guilt. Cota-Meza claims that this instruction requires the reversal of his conviction.

Jury Instruction 24 provided:

> Evidence has been received regarding law enforcement methods and equipment used in the investigation of this case. Likewise, evidence has been received concerning enforcement methods and equipment which were not used in relation to the investigation.

Appendix

> You may consider this evidence for the purpose of evaluating the weight of the evidence produced by the government and the credibility of law enforcement personnel involved in the investigation. However, there is no legal requirement that the government, through its enforcement agents, must use all known or available crime detection methods or any particular type of equipment in its investigations.

This instruction does not constitute an abuse of discretion. This court will not reverse a district court's decision to give a particular jury instruction unless there is substantial doubt that the jury was fairly guided. *United States v. Valdez*, 225 F.3d 1137, 1139 (10th Cir. 2000). The challenged instruction does not misstate the law; Cota-Meza himself acknowledges that there is no legal requirement that law enforcement officers utilize every available investigative method. Merely because the instruction informs the jury that the utilization of all known investigative methods is not legally *required* does not prevent the jury from concluding that a failure to employ certain investigative methods nevertheless detracts from the credibility of the government's evidence. The instruction specifically notes that the jury can consider the manner in which the investigation was conducted for the purposes of evaluating the weight of the evidence produced by the government and the credibility of the testimony of the law enforcement personnel involved in the investigation. Other jury instructions further informed the jury that they were the sole judges of the credibility of witnesses and the weight to be given to evidence.

For all these reasons, there is no substantial doubt that the jury was fairly guided. Therefore, the district court did not abuse its discretion in giving Jury Instruction 24.

3. *Sufficiency of the Evidence*

This court reviews *de novo* the question of whether there is sufficient evidence to support a conviction. *Jaynes*, 75 F.3d at 1498. In considering the sufficiency of the evidence, this court looks at the evidence in the light most favorable to the government and determines whether enough evidence was presented at trial for a jury to find the defendant guilty beyond a reasonable doubt. *Id.*

Cota-Meza argues that there was insufficient evidence to convict him of the possession of cocaine with intent to distribute in violation of 21 U.S.C. § 841(a). He notes that the main element at issue in this case was whether he knowingly possessed the cocaine. Cota-Meza argues that inferring such knowledge from his sole possession of the vehicle, without more, violates the presumption of innocence. Cota-Meza acknowledges, however, that this Court has held that it is permissible to infer that a driver of a vehicle has knowledge of the drugs hidden within it. *See Levario*, 877 F.2d at 1485-86. Cota-Meza nevertheless urges this court to adopt the Fifth Circuit's view that knowledgeable possession requires circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge. *See United States v. Anchondo-Sandoval*, 910 F.2d 1234, 1236 (5th Cir. 1990). Under this standard, possession of or control over a vehicle does not, standing alone, suffice to prove guilty knowledge. *See id.* This court declines the invitation to abandon this circuit's precedent in favor of the Fifth Circuit approach.

Sufficient evidence was presented at trial to support Cota-Meza's conviction. This court has held that it is permissible to infer that the driver of a vehicle has knowledge of the contraband found within it. *Levario*, 877 F.2d at 1485-86. Cota-Meza was in sole possession of the vehicle in which the cocaine was found. Thus, the jury could reasonably infer that he had knowledge of the cocaine. *Id.*

Moreover, other evidence supports the inference that Cota-Meza knowingly possessed the cocaine with intent to distribute it. This court has repeatedly recognized that the value of drugs can support an inference of knowledge. *United States v. Rodriguez*, 192 F.3d 946, 950 (10th Cir. 1999); *see also United States v. Pollock*, 926 F.2d 1044, 1050 (11th Cir. 1991) (one million dollars worth of cocaine supports an inference of knowledge of the contraband). The hidden compartment of the minivan Cota-Meza was driving contained 18.8 kilograms of cocaine with a wholesale street value in excess of $2.6 million. Such a large amount of cocaine with a high street value supports a reasonable inference of Cota-Meza's knowledge of the presence of the contraband in the minivan.

Thus, there was sufficient evidence presented at trial for a reasonable jury to find Cota-Meza guilty of possessing cocaine with intent to distribute beyond a reasonable doubt.

IV. CONCLUSION

For the foregoing reasons, this court **affirms** Cota-Meza's conviction.